

**Security Council**

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**Letter dated 18 August 2017 from the Chargé d'affaires a.i. of the
Permanent Mission of Iraq to the United Nations addressed to the
President of the Security Council**

Upon instructions from my Government, I have the honour to convey herewith a copy of the letter dated 1 August 2017 from the Minister for Foreign Affairs of the Republic of Iraq, Ibrahim al-Jaafari, regarding the request for a copy of the archive of the United Nations Compensation Commission (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Mohamed Sahib Marzooq
Chargé d'affaires a.i.



**Annex to the letter dated 18 August 2017 from the Chargé
d'affaires a.i. of the Permanent Mission of Iraq to the
United Nations addressed to the President of the Security Council**

[Original: Arabic]

As you are aware, the Security Council created an entirely new type of mechanism in order to hold Iraq responsible for paying compensation for damage that was caused when it entered Kuwait in 1990 and to settle claims by deducting the requisite sums from the oil exports of Iraq. In its resolution 687 (1991), the Security Council not only affirmed the principle of international responsibility in connection with the payment of compensation for that damage in accordance with the principles of international law, but also established a mechanism that would mandate compensation, consider and settle claims and deduct the requisite sums. To that end, the Council established, pursuant to its resolution 692 (1991), the United Nations Compensation Commission and the Compensation Fund. Iraq was thus deprived of its right to negotiate with the claimants or seek a mutually agreeable settlement with them. From the time that it began its work and up to the time that it settled the compensation claims, the Commission did not allow Iraq to participate in any relevant aspects of the process. It did not allow Iraq to review or comment on the compensation claims or to present legal defences, nor did it allow Iraq the opportunity to defend itself as the respondent. The Commission deprived Iraq of even the most basic legal right to object to or appeal against the decisions made by the Panels of Commissioners responsible for settling claims. Moreover, the nature of the Commission's work was more political than legal. Despite this unfair treatment, Iraq, which entered a new era following the 2003 changeover, strived in all earnestness to work constructively with the Commission in order to resolve this thorny issue, in the hope that the Commission would strive to ensure that Iraq was treated fairly and to remedy the injustices that Iraq had suffered as a result of the implementation of such unprecedented procedures.

One of the most pressing legal issues facing Iraq today with respect to the question of compensation is that many individuals and other parties have filed lawsuits in Iraqi courts claiming compensation for their real estate holdings in Iraq or for other damages they maintain that they had suffered when Iraq entered Kuwait. In order for the Iraqi courts to settle such lawsuits fairly and equitably, the Commission must offer legal assistance to those courts by providing a complete archive of compensation claims and the decisions taken by the Commission's Governing Council in respect of those claims. This would enable the courts to determine whether claimants have already been awarded compensation by the Commission for the damages claimed in the lawsuits and thus prevent them from being compensated twice for the same damages; that is to say, it would prevent them from being awarded compensation for the same damages by both the Commission and the courts. Iraq has an unquestionable legal right to such assistance, as without it the Iraqi courts would be unable to rule on cases concerning damages that had been caused when Iraq entered Kuwait. In light of this legal fact, Iraq submitted a number of official requests to the secretariat of the United Nations Compensation Commission in Geneva asking it to provide the complete archive for all categories of settled compensation claims (individual, government and corporate). It also asked the secretariat to confirm whether certain Kuwaiti citizens with claims before the Iraqi courts had received decisions from the Commission. However, those requests were rejected and the Commission declined to provide any documents or information in that regard, citing the provisional rules for claims procedure and the confidential nature of its work. This is unacceptable. The failure to accede to Iraq's just requests creates a situation wherein a claimant who has been awarded compensation by the Commission could file suit in Iraqi and international courts in

order to obtain compensation again for the same damages. In such cases, Iraq would not have the legal proof it needs to protect its rights, because it has not been able to review the claim documents and has no information about the decisions made on the claims. This situation is patently unjust and without precedent.

The Government of the Republic of Iraq draws your attention to these legal facts and the unjust scenario wherein Iraq could potentially pay compensation multiple times for claims submitted to more than one body (i.e., the Commission and the national courts). Iraq hopes that the Security Council will intercede with the Governing Council of the United Nations Compensation Commission and urge it to accede to the requests of Iraq, and to work constructively with Iraq and provide it with the full archive of individual, government and corporate claims.

(Signed) Ibrahim Al-Jaafari
Minister for Foreign Affairs of the Republic of Iraq
